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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Janet Susan McCormick,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-24-00028-PHX-JAT

ORDER

15 Pending before the Court is the parties' stipulation to an award of attorneys' fees
16 under the Equal Access to Justice Act ("EAJA"). (Doc. 20).

17 "A litigant is entitled to attorneys' fees under the EAJA if: '(1) he is the
18 prevailing party; (2) the government fails to show that its position was
19 substantially justified or that special circumstances make an award unjust;
20 and (3) the requested fees and costs are reasonable.' *Carbonell v. I.N.S.*, 429
F.3d 894, 898 (9th Cir. 2005) (citing *Perez-Arellano v. Smith*, 279 F.3d 791,
793 (9th Cir. 2002)); *see also* 28 U.S.C. § 2412(d)(1)(A)."

21 *Michele M. v. Saul*, No. 19-CV-00272-JLB, 2020 WL 5203375, at *1 (S.D. Cal. Sept. 1,
22 2020). The Court will discuss each prong in turn.

23 Here, the parties' discussion regarding Plaintiff's entitlement to fees under the
24 EAJA is: "such award should not be ... construed as a concession by the Commissioner
25 that [the] original decision denying benefits was not substantially justified. Accordingly,
26 Plaintiff is entitled to attorney fees ... as a compromise settlement, which does not
27 constitute an admission of liability on the part of Defendant under the EAJA or otherwise."
28 (Doc. 20 at 2). In other words, the parties do not discuss the EAJA entitlement prongs.

1 Regarding prong one, this Court remanded this case to the social security
2 administration for further proceedings. (Doc. 18). Accordingly, the Court finds that
3 Plaintiff is the prevailing party.

4 Regarding prong two, the Ninth Circuit Court of Appeals has explained:

5 Pursuant to the EAJA, we are required to award [Plaintiff] fees and other
6 expenses incurred in connection with his civil action unless we find that the
7 position of the United States was “substantially justified” or that special
8 circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A).

9 The test for determining whether the Secretary’s position was substantially
10 justified under the EAJA is whether the position had a reasonable basis in
11 both law and fact—that is, whether it was justified “to a degree that could
12 satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565
13 (1988); *see also Barry v. Bowen*, 825 F.2d 1324, 1330 (9th Cir. 1987). The
14 burden is on the Secretary to prove that his position was substantially
15 justified. *Id.*

16 *Russell v. Sullivan*, 930 F.2d 1443, 1445 (9th Cir. 1991).

17 The Government’s stipulation to pay fees, while simultaneously not admitting it
18 owes the fees, is an ambiguous legal position. Nonetheless, applying the test articulated in
19 *Russell*, the Court finds that the Government has failed to carry its burden to prove that its
20 position was substantially justified or that special circumstances make an award unjust.
21 *Russell*, 930 F.2d at 1445; *see also Michele M.*, 2020 WL 5203375, at *1.

22 Regarding prong three, the Court should award only reasonable fees. Here, the
23 Court has not been provided with a billing statement. Thus, the Court does not know the
24 rate charged or the hours expended. Nonetheless, the Court finds that the Government, by
25 the stipulation, has conceded that the amount of fees sought in this case are reasonable.

26 Plaintiff’s counsel states in the stipulation that Plaintiff has signed an assignment of
27 any award of fees to her. The Court has not been provided with a copy of the assignment.
28 Nonetheless, the Court will accept Plaintiff’s counsel’s representation that such an
assignment is available in her records for review if this representation is ever disputed.

Based on the foregoing,

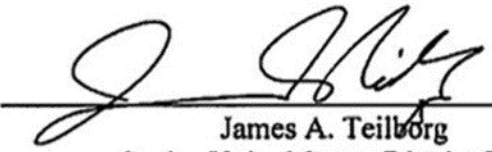
IT IS ORDERED granting the stipulation (Doc. 20) such that fees and expenses in
the amount of \$8,900.00 as authorized by 28 U.S.C. § 2412, and costs in the amount of \$0

1 as authorized by 28 U.S.C. § 1920, are awarded to Plaintiff subject to the terms of the
2 Stipulation.

3 **IT IS FURTHER ORDERED** that if, after receiving this Order, the Commissioner:
4 (1) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury
5 Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, then
6 the fees awarded herein will be paid to Plaintiff's attorney pursuant to the assignment
7 executed by Plaintiff. However, if there is a debt owed under the Treasury Offset Program,
8 then the Commissioner cannot agree to waive the requirements of the Anti-Assignment
9 Act; thus, any remaining Equal Access to Justice Act fees after offset will be paid to
10 Plaintiff but delivered to Plaintiff's attorney.¹

11 Dated this 28th day of February, 2025.

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James A. Teilborg
Senior United States District Judge

¹ This award is without prejudice to Plaintiff seeking attorneys' fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.